

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Children and Families Committee

BILL: SB 1850

INTRODUCER: Senator Haridopolos

SUBJECT: Programs of the Department of Children and Family Services

DATE: March 14, 2006

REVISED: 3/27/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Goltry</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/3 amendments</u>
2.	<u></u>	<u></u>	<u>GO</u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Senate Bill 1850 deletes a provision in s. 397.451(1)(f), F.S., requiring immediate dismissal of an employee of a licensed substance abuse treatment provider upon disapproval of a request for an exemption from disqualification based on the results of employment screening. It prohibits the Department of Children and Family Services (DCF) from issuing a regular license to a substance abuse treatment provider if that provider fails to show proof that background screening information on employees has been submitted.

The bill also saves from repeal s. 20.19(2)(c), F.S., which creates the Assistant Secretary for Substance Abuse and Mental Health in DCF and s. 20.19(4)(b)6. and 8., F.S., which creates the Mental Health Program Office and the Substance Abuse Program Office.

The bill takes effect upon becoming a law.

This bill substantially amends the following sections of the Florida Statutes: 397.451. The bill also repeals s. 3 of ch. 2003-279, L.O.F.

II. Present Situation:

Background Screening of Substance Abuse Treatment Provider Staff

Substance abuse treatment programs are licensed by the DCF Substance Abuse Program Office under authority granted in s. 397.401, F.S., which states, “It is unlawful for any person to act as a substance abuse service provider unless it (sic) is licensed or exempt from licensure under this chapter.” In order to obtain a license, a provider must apply to the department and submit “sufficient information to conduct background screening as provided in s. 397.451, F.S.”¹ According to the administrative rule implementing this section, the required documentation is verification that fingerprinting and background checks have been completed as required by ch. 397, F.S., and ch. 435, F.S.²

Section 397.451, F.S., requires that “all owners, directors, and chief financial officers of service providers are subject to level 2 background screening as provided under chapter 435. . . . All service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services are subject to level 2 background screening as provided under chapter 435.” Members of a foster family and persons who live in the foster home who are between 12 and 18 years of age are not required to be fingerprinted, but these youth must have background checks for delinquency records. All other members of a foster family and any other persons residing with a foster family who are over 18 years of age must have complete background checks. Church or nonprofit religious organizations that are exempt from licensure as substance abuse treatment programs must also comply with personnel screening requirements.

Exemptions from personnel screening requirements include:

- Persons who volunteer at a program for less than 40 hours per month and who are under direct and constant supervision by persons who meet all screening requirements;
- Service providers that are exempt from licensing;
- Persons employed by the Department of Corrections in a substance abuse service component who have direct contact with unmarried inmates under the age of 18 or with inmates who are developmentally disabled.³

The requirements for level 1 and level 2 screening are found in ch. 435, F.S. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and may include criminal records checks through local law enforcement agencies. Level 2 screening is required for all employees in positions designated by law as positions of trust or responsibility, and it includes security background investigations which consist of at least fingerprinting, statewide criminal and juvenile records checks through FDLE, and federal criminal records checks through the Federal Bureau of Investigation (FBI) and may include local criminal records checks through local law enforcement agencies.⁴

¹ s. 397.403(e), F.S.

² Ch.65D-30.003 (6)(s), F.A.C.

³ s. 397.451 (2)(c), F.S.

⁴ s. 435.04(1), F.S.

Within five working days after starting to work, it is incumbent upon an employee who is in a position for which employment screening is required to submit to the employer a complete set of information necessary to conduct a screening. For level 1 screening, the employer then submits the information to FDLE within five working days after receiving it. The FDLE conducts a search of its records and responds to the employer who then informs the employee whether screening has revealed any disqualifying information. For level 2 screening, the employer or the licensing agency submits the screening information to FDLE within five working days after receiving it; FDLE conducts its search of criminal and juvenile records and requests that the FBI conduct a search. The employee must supply any missing criminal or other necessary information to the employer within 30 days after the employer requests the information or they are subject to automatic disqualification. After the background screening is complete, FDLE responds to the employer or licensing agency who informs the employee whether screening has revealed disqualifying information.⁵

Under certain circumstances, DCF may grant an exemption from disqualification as provided in s. 435.07, F.S. These circumstances are:

- Felonies committed more than three years prior to the date of disqualification;
- Misdemeanors prohibited under any of the Florida Statutes cited in the chapter or under similar statutes of other jurisdictions;
- Offenses that were felonies when committed but are now misdemeanors;
- Findings of delinquency; or
- Commissions of acts of domestic violence as defined in s. 741.30, F.S.⁶

Section 435.07, F.S., requires that “(i)n order for a licensing department to grant an exemption to any employee, the employee must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment. Employees seeking an exemption have the burden of setting forth sufficient evidence of rehabilitation, including, but not limited to, the circumstances surrounding the criminal incident for which an exemption is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the employee since the incident, or any other evidence or circumstances indicating that the employee will not present a danger if continued employment is allowed. The decision of the licensing department regarding an exemption may be contested through the hearing procedures set forth in chapter 120.” However, disqualification may not be removed from, and no exemption may be granted to, an individual who is found guilty of, regardless of adjudication, or who has entered a plea of *nolo contendere* or guilty to any felony covered by s. 435.03, F.S., solely by pardon, executive clemency, or restoration of civil rights.⁷

Since many substance abuse treatment programs employ persons who are themselves in recovery, DCF is authorized to grant additional exemptions from disqualification for employees of substance abuse treatment programs. Section 397.451 (4), F.S., provides, “Since rehabilitated substance abuse impaired persons are effective in the successful treatment and rehabilitation of substance abuse impaired adolescents, for service providers which treat adolescents 13 years of age and older, service provider personnel whose background checks indicate crimes under

⁵ s. 435.05, F.S.

⁶ s. 397.451 (4)(a), F.S.

⁷ s. 435.07 (4), F.S.

s. 817.563, s. 893.13, or s. 893.147⁸ may be exempted from disqualification from employment pursuant to this paragraph.”⁹ This provision also authorizes DCF to grant exemptions from disqualification for personnel who work exclusively with adults in substance abuse treatment facilities. Employees must submit a request for an exemption from disqualification within 30 days after being notified of a pending disqualification. The statute provides that the “employment of service provider personnel shall not be adversely affected pending disposition of the request for an exemption. Disapproval of a request for an exemption shall result in the immediate dismissal of the service provider personnel from employment with the provider.”¹⁰ This provision, which allows an employee to remain in their position until disposition of a request for exemption, is in conflict with ch. 435.06, F.S., which requires that “(t)he employer must either terminate the employment of any of its personnel found to be in noncompliance with the minimum standards for good moral character contained in this section or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to s. 435.07.”¹¹

According to DCF, substance abuse providers work with a designated district background screening unit coordinator to process requests for background screening. The district unit follows the requirements of Chapter 435, F.S., for the background screening process, which requires either immediate termination of employment of individuals with a disqualifying offense or the disqualified individual must be placed in a position where there is no contact with children or persons with developmental disabilities. The department reports that no substance abuse provider would knowingly allow a convicted felon to work with children or a person with developmental disabilities because it is a serious risk management issue.¹²

Substance Abuse and Mental Health Services

The Legislature has directed DCF “to evaluate, research, plan, and recommend to the Governor and the Legislature programs designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders”¹³ The Mental Health Program Office in DCF is responsible for the planning, evaluation, and implementation of a complete and comprehensive statewide program of mental health, including community services, receiving and treatment facilities, child services, research and training. The Substance Abuse Program Office is dedicated to the development of a comprehensive system of prevention, emergency/detoxification, and treatment services for individuals and families at risk of or affected by substance abuse, to promote their safety, well-being, and self-sufficiency.¹⁴ In FY 2004-2005, 145,617 adults with serious mental illnesses, 88,245 children with or at-risk for emotional disturbance, 109,355 adults with substance abuse problems, and 56,941 children with

⁸ s. 817.563, F.S., relates to fraudulent sale of all controlled substance; s. 893.13, F.S., relates to sale, manufacture, or delivery, or possession with intent to sell, manufacture, or deliver, a controlled substance; s. 893.147, F.S., relates to use or possession of drug paraphernalia.

⁹ s. 397.451 (4)(b), F.S.

¹⁰ s. 397.451(1)(f), F.S.

¹¹ s. 435.06, F.S.

¹² Department of Children and Family Services, Correspondence to Rep. Gayle Harrell Re. Background Screening of Substance Abuse Provider Personnel, December 28, 2005.

¹³ s. 394.453, F.S.

¹⁴ Department of Children and Family Services, http://www.state.fl.us/cf_web/

or at risk of substance abuse problems were provided services in community mental health and substance abuse programs.¹⁵

Organization of the Substance Abuse and Mental Health Program in DCF

Chapter 20.19, F.S., describes the organizational structure of DCF. In addition to creating the service districts and establishing program offices, this section requires the secretary to appoint an Assistant Secretary for Substance Abuse and Mental Health who must have expertise in both substance abuse and mental health programs and services.¹⁶ Section 20.19, F.S., also directs the secretary to appoint a Program Director for Substance Abuse and a Program Director for Mental Health who have, “expertise and experience in their respective fields to head the state's substance abuse and mental health programs.” The program directors have line authority over all district substance abuse and mental health program management staff and the program director has direct control over the program's budget and contracts for services. The position of Assistant Secretary for Substance Abuse and Mental Health was created by ch. 2003-279, L.O.F., as part of a comprehensive realignment of the policy and program authority for substance abuse and mental health services in Florida. This legislation created the Assistant Secretary position and also created the Substance Abuse and Mental Health Corporation. While the corporation was in response to the need for a focal point for independent oversight and consumer participation in the public substance abuse and mental health service delivery system, the creation of an assistant secretary level position in DCF addressed what was perceived as the low priority that these services had in the department's overall mission. This growing dissatisfaction with the current service delivery system and its place in the DCF organization had resulted in legislative proposals to create a separate department of mental health and substance abuse or move the program out of DCF.¹⁷ The legislation creating the assistant secretary position and line authority for substance abuse and mental health programs at the district level was a compromise reached to address the concerns of stakeholders.

Section 4 of ch. 2003-279, L.O.F., required that by February 1, 2006, the Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Auditor General jointly conduct an evaluation of the state's substance abuse and mental health systems and its management. The evaluation was to address “the impact the organizational changes described in sections 20.19 (2)(c), and 394.655, F.S., as created by this act have had on the substance abuse and mental health systems” in the areas of service coordination, the efficiency of service delivery to clients, the quality of publicly funded substance abuse and mental health services, the use of evidence-based standards, data collection and analysis, and service recipients' and communities' satisfaction with state-funded services. An initial report and a final report of the evaluation were to be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives by February 1, 2005, and February 1, 2006. The final report was to include recommendations concerning the future of the corporation and the structure of the state's mental health and substance abuse authority and their placement. The section of statute creating the Assistant Secretary and the program office is scheduled for repeal on October 1, 2006, unless reviewed and reenacted by the Legislature before that date.

¹⁵ Department of Children and Family Services, *Mental Health and Substance Abuse Services Plan Update 2006*, January 1, 2006.

¹⁶ s. 20.19(2)(c), F.S.

¹⁷ Robert Constantine, Ph.D., Minutes, Florida Substance Abuse and Mental Health Corporation, March 12, 2004.

The final OPPAGA report was issued on February 1, 2006, and found that “(t)he centralized structure created some challenges but has produced several benefits, including improved system outcomes, better service coordination, more streamlined functions, greater use of evidenced-based practice, and enhanced data collection and analysis. Therefore, the current structure and placement of the substance abuse and mental health programs should be continued beyond the October 2006 sunset date.”¹⁸

III. Effect of Proposed Changes:

Senate Bill 1850 amends s. 397.451(1)(f), F.S., deleting the requirement that an employee of a licensed substance abuse treatment provider must be dismissed immediately when a request for an exemption from employment screening is disapproved. It adds language that prohibits the DCF from issuing a regular license to a substance abuse treatment provider if the provider fails to show proof that background screening information on employees has been submitted.

The bill abrogates the scheduled repeal of s. 20.19 (2)(c), F.S., and s. 20.19 (4)(b)6. and 8., F.S., on October 1, 2006. Section 20.19(2)(c), F.S., creates the Assistant Secretary for Substance Abuse and Mental Health and s. 20.19 (4)(b)6. and 8., F.S., creates the Mental Health Program Office and the Substance Abuse Program Office in DCF.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹⁸ Office of Program Policy Analysis & Governmental Accountability, Report No. 06-12, Centralizing DCF Substance Abuse and Mental Health Programs Produced Benefits,” February 2006.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill as drafted contains language that is still in conflict with s. 435.06(2), F.S., which requires the immediate termination of employees found to be in noncompliance with the minimum standards for good moral character. It would permit employees who have been found to have a disqualifying offense to continue to work in areas of trust and responsibility while awaiting a decision on an exemption from disqualification. The bill should be amended to delete the contradictory language and clarify the reference to ch. 435, F.S.

VII. Related Issues:

If the scheduled repeal of s. 20.19 (2)(c), F.S., and 20.19 (4)(b)6. and 8., F.S., is not abrogated, there will be no statutory basis for the continuation of the Substance Abuse And Mental Health Program Offices. Pursuant to s. 20.19(7)(b), F.S., divisions or offices in DCF may only be established by specific statutory enactment.

Elimination of the program offices and the assistant secretary would be viewed negatively by stakeholders as an indication that substance abuse and mental health services would again have a low priority and decreased visibility in DCF. The benefits realized by the current administrative structure, including improved system outcomes, better service coordination, more streamlined administrative functions, and enhanced data collection and analysis could be reversed over time.

VIII. Summary of Amendments:

Barcode 975036 by Children and Families

Adds marriage and family therapists (MFTs) licensed under chapter 491, F.S. to the list of mental health professionals who can execute a certificate authorizing the involuntary examination of persons pursuant to part I of ch. 394, F.S. (the Baker Act); defines “marriage and family therapist” and “mental health counselor” for purposes of part I of ch. 394, F.S.; revises the definition of “service provider” to include MFTs and mental health counselors (MHCs); authorizes MFTs and MHCs to determine if the services recommended in a treatment plan for an individual being considered for involuntary outpatient treatment are clinically appropriate; requires any evaluations performed by an MFT or an MHC to be included in any documentation provided to a treatment facility director when an individual is ordered to involuntary inpatient placement.

Barcode 785890 by Children and Families

Amends s. 383.0115, F.S., deleting the repeal of the Commission on Marriage and Family Support Initiatives and requiring that the Department of Children and Family Services advise the Legislature when the commission fails to serve an essential public purpose.

Barcode 200164 by Children and Families

This amendment removes language in chapter 397, F.S., that is in conflict with the employment screening requirements in ch. 435, F.S., and references the appropriate section of ch. 435, F.S.